



KENTUCKY OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
April 21, 2021
Public Meeting Minutes

The Kentucky Occupational Safety and Health (OSH) Standards Board, hereinafter referred to as Board, met April 21, 2021 via Zoom.

Chairman Larry Roberts called the meeting to order at 10:00 am ET.

Ms. Amy Pennington called the roll. Members attending were Ms. Angela Bednark, Ms. Caitlin Blair, Dr. Traci Byrd, Mr. William Carey, Mr. Hampton Henton, Mr. John Holbrook, Mr. James Kay, Mr. Kenneth Nichter, Mr. Charles Steve Sparrow, Mr. Robert Mac Stone, and Mr. John Stovall. Mr. Keith Murt was absent.

Chairman Roberts noted for the record there was a quorum. Chairman Roberts stated the following week will celebrate fifty (50) years since OSHA was created by Congress and a Workers Memorial Day will be held to remember and honor all working men and women who have lost their lives on the job.

Chairman Roberts inquired if there were any additions or corrections to the November 10, 2020 Board meeting minutes. There being none, Chairman Roberts opened the floor for a motion to accept the minutes. A motion was made by Mr. Stovall and seconded by Mr. Nichter; the motion passed unanimously.

Chairman Roberts asked if there was any Old Business to discuss. There being none, Chairman Roberts turned called upon General Counsel Sam Flynn to provide an overview and impact assessment of Senate Bill (SB) 65 and House Bill (HB) 475, which were adopted by the General Assembly.

There being no questions for Mr. Flynn, Chairman Roberts called upon Commissioner Kimberlee Perry.

Commissioner Perry explained that on June 9, 2020, 803 KAR 2:180, Recordkeeping; Reporting; Statistics, was found deficient by the Administrative Regulation Review Subcommittee (ARRS) mainly due to the definition of hospitalization. On August 4, 2020, Governor Beshear determined 803 KAR 2:180 shall be effective notwithstanding the ARRS finding. The regulation became effective September 29, 2020. SB 65 would render 803 KAR 2:180 null and void and unenforceable; therefore, 803 KAR 2:180E was filed and addressed the findings of deficiency. It became effective March 10, 2021. Hospitalizations were redefined to mean the formal admission to a hospital or clinic for care or treatment; the requirement to report employee hospitalization for observation or diagnostic testing was removed. The requirement to report hospitalizations of three (3) or more employees within eight (8) hours was removed and all



hospitalizations must be reported within seventy-two (72) hours. The regulation makes clear the reporting requirement applies to work-related fatalities, amputation, loss of eye and hospitalizations with work environment language removed. An ordinary regulation was filed simultaneously and will replace the emergency regulation.

Commissioner Perry provided an OSH Program update. Enforcement and consultation returned to providing in-person surveys and inspections. Closure Orders and Notice of Deficiencies under the Public Health Executive Orders drastically decreased due to employer compliance. Compliance hired nine (9) new employees, they are five (5) safety compliance officers, three (3) industrial hygienists, and one (1) discrimination officer.

At the conclusion of Commissioner Perry's report, Chairman Roberts added that regarding SB 65 and HB 475, as well as 803 KAR 2:180, the Secretary's Office and the Commissioner's Office actively sent correspondence, met with sponsors, and met with Chamber of Commerce representatives to try to find compromise and protect our ability to adopt, and enforce, regulations, and address their concerns with the recordkeeping and reporting regulation.

Chairman Roberts asked OSH Standards Specialist Robin Maples to provide additional regulatory updates.

Ms. Maples began by discussing emergency regulation 803 KAR 2:320E, Toxic and Hazardous Substances, and the ordinary regulation filed simultaneously. OSHA issued a Final Rule on Beryllium, clarifying certain provisions and simplifying or improving compliance with 29 Code of Federal Regulations (CFR) 1910.1024, Beryllium. To ensure Kentucky's state plan obligation to adopted OSHA's requirement within six (6) months of the *Federal Register* publication, the Cabinet filed the emergency regulation on January 13, 2021. An ordinary regulation was filed simultaneously and will replace the emergency regulation.

No action being required for this update, Chairman Roberts asked Ms. Maples to report two (2) regulations for Board consideration.

Ms. Maples explained the regulatory updates are primarily technical to establish consistency across regulations in addition to minor edits to harmonize definitions throughout the entirety of the regulations. This does not include the two (2) regulations that are being considered for repeal.

Ms. Maples stated the first two (2) regulations for consideration simply adopt the federal requirements. 803 KAR 2:308, Personal Protective Equipment, adopts 29 CFR Part 1910, Subpart I adopts OSHA's September 26, 2019 Final Rule including the addition of two (2) respirator fit testing protocols. 803 KAR 2:423, Stairways and ladders, adopts 29 CFR Part 1926, Subpart X and an updated title to the regulation is recommended. The KY OSH Program supports the adoption of these amendments.



There being no questions for Ms. Maples, Chairman Roberts opened the floor for a motion to adopt amendments to 803 KAR 2:308 and 803 KAR 2:423. A motion was made by Mr. Kay and seconded by Ms. Blair; the motion passed unanimously.

Chairman Roberts asked Chuck Stribling, OSH Federal-State Coordinator, to report two (2) regulations for Board consideration.

Mr. Stribling advised the first regulation for consideration was 803 KAR 2:306, Occupational Health and Environmental Controls, which adopts the federal requirements found in 29 CFR 1910, Subpart G and contains a state-specific requirement extending additional protections. It includes 8,000 Hertz for audiometric testing, whereas the federal stops at 6,000 Hertz. There is also state-specific language regarding mobile test van pressure levels, audiometer calibration, and employee notice of the standard. The KY OSH Program supports the adoption of these amendments.

There being no questions for Mr. Stribling, Chairman Roberts asked for a motion to adopt amendment to 803 KAR 2:306. A motion was made by Mr. Stovall and seconded by Mr. Holbrook; the motion passed unanimously.

Mr. Stribling continued with 803 KAR 2:440, Cranes and Derricks in Construction. The regulation adopts the federal requirements found in 29 CFR 1926, Subpart CC and includes a state-specific requirement that maintains the ten (10) foot trigger height for fall protection when engaged in work specific to cranes and derricks in construction. The federal requirement is fifteen (15) feet. The KY OSH Program supports the adoption of the amendment.

There being no questions for Mr. Stribling, Chairman Roberts asked for a motion to adopt the amendment to 803 KAR 2:440. A motion was made by Dr. Byrd and seconded by Mr. Kay; the motion passed unanimously.

Chairman Roberts asked Ms. Maples to report two (2) regulations that repeal two (2) existing regulations. Ms. Maples began with 803 KAR 2:011 which repeals 803 KAR 2:018, Refuse Collection and Compaction Equipment Standards, effective November 1, 1978, is rarely utilized and untouched since its effective date. Ms. Maples also reported on 803 KAR 2:041 which repeals 803 KAR 2:040, Definitions, effective December 11, 1974 and untouched since its effective date. The two (2) definitions in the regulation have been added into other applicable regulations. The KY OSH Program supports the adoption of these amendments.

There being no questions for Ms. Maples, Chairman Roberts asked for a motion to adopt the regulations. A motion was made by Mr. Stone and seconded by Mr. Holbrook; the motion passed unanimously.

Chairman Roberts asked Mr. Stribling to report on four (4) additional regulatory amendments. Mr. Stribling reported the first amendment for consideration was 803 KAR 2:062, Employer responsibility when an employee is exposed to toxic substances or harmful physical agents. The



amendments to this state-specific regulation, promulgated in 1976 and untouched since, are primarily technical and non-substantive. It is re-titled to better reflect the subject matter and changes are intended to maintain consistency with all other OSH regulations. The KY OSH Program supports the adoption of these amendments.

There being no questions, Chairman Roberts asked for a motion to adopt the amendment to 803 KAR 2:062. A motion was made by Mr. Nichter and seconded by Mr. Stovall; the motion passed unanimously.

The next amendment for consideration presented by Mr. Stribling 803 KAR 2:230, Pay During Inspection Activity, another state-specific regulation with no federal equivalent. The regulation has not been amended since its implementation June 6, 1979. These amendments are technical and maintain consistency with other OSH regulations. The KY OSH Program supports the adoption of these amendments.

There being no questions, Chairman Roberts asked for a motion to adopt the amendment to 803 KAR 2:230. A motion was made by Mr. Holbrook motioned and seconded by Mr. Kay; the motion passed unanimously.

Mr. Stribling continued with consideration for amendments to 803 KAR 2:325, General Industry Standards, also a state-specific regulation, effective August 3, 1977. The regulation maintains language related to automotive-type batteries, off highway motor vehicles and equipment, as well as fire apparatus and fire department facilities. Proposed changes remove language related to the safety and testing of supply lines in excess of 600 volts. Those requirements now exist in 29 CFR 1910.269 and are unnecessary in this state-specific regulation. Additionally, outdated language related to safety belts, lanyards, and lifelines is removed for the same reason, it is found in 29 CFR 1910 Subpart D. The amendment strikes outdated language related to rollover protective structures and overhead protection. The KY OSH Program supports the adoption of the amendments.

There being no questions, Chairman Roberts opened the floor for a motion to adopt amendments for 803 KAR 2:325. A motion was made by Mr. Stone and seconded by Mr. Kay; the motion passed unanimously.

Mr. Stribling continued with 803 KAR 2:435, Supply Lines in Excess of 600 volts, effective and untouched since August 3, 1977. Changes include amending the title to better reflect the subject matter and other technical changes to maintain consistency with other OSH regulations. The KY OSH Program supports the adoption of these amendments.

There being no questions for Mr. Stribling, Chairman Roberts asked for a motion to adopt changes to 803 KAR 2:435. A motion was made by Mr. Nichter and seconded by Mr. Stovall; the motion passed unanimously.

Chairman Roberts asked Ms. Maples to continue with a series of regulatory amendments.



Ms. Maples began reported set of regulations with proposed amendments based upon federal requirements. The first, 803 KAR 2:060, Employer Responsibility to Post Notice, includes proposed amendments updating existing language, removing all abatement and verification language, and a title change to better reflect the updated subject matter. The KY OSH Program supports the adoption of these amendments.

There being no questions for Ms. Maples, Chairman Roberts opened the floor for a motion to adopt the recommendations for 803 KAR 2:060. A motion was made by Ms. Blair and seconded by Mr. Kay; the motion passed unanimous.

Ms. Maples introduced the next regulation for consideration, 803 KAR 2:070, Inspections. The proposed amendments update existing language and a new title is recommended to better reflect the subject matter. The KY OSH Program supports the adoption of these amendments.

There being no questions for Ms. Maples, Chairman Roberts opened the floor for a motion to adopt the recommendations for 803 KAR 2:070. A motion was made by Ms. Bednark and seconded by Mr. Carey; the motion passed unanimously.

Ms. Maples continued with recommendations for 803 KAR 2:110, Employer and Employee Representatives, which is untouched since its December 11, 1974 implementation. The language mirrors the language found in 29 CFR 1903.8. The KY OSH Program supports the adoption of these amendments.

There being no questions for Ms. Maples, Chairman Roberts asked for a motion to adopt amendments to 803 KAR 2:110. A motion was made by Dr. Byrd motioned and seconded by Ms. Bednark; the motion passed unanimously.

Ms. Maples continued with consideration for 803 KAR 2:122, Abatement, untouched since its June 6, 1979 effective date. The regulation mirrors federal language found in 29 CFR 1903.14(a). The proposed amendment is updates language as well as incorporate abatement verification language previously found in 803 KAR 2:060, which mirrors 29 CFR 1903.19. Additionally, a new title is recommended to better reflect the subject matter in its entirety. The KY OSH Program supports the adoption of these amendments.

There being no questions for Ms. Maples, Chairman Roberts asked for a motion to adopt amendments to 803 KAR 2:122. A motion was made by Mr. Nichter and seconded by Mr. Kay; the motion passed unanimously.

Ms. Maples reported on amendments to 803 KAR 2:125, Posting of Citations, untouched since its June 6, 1979 effective date. The proposed amendment updates existing language which mirrors the language found in 29 CFR 1903.16. The KY OSH Program supports the adoption of the amendments.



There being no questions for Ms. Maples, Chairman Roberts opened the floor for a motion to adopt amendment to 803 KAR 2:125. A motion was made by Mr. Stone and seconded by Ms. Bednark; the motion passed unanimously.

Next, Ms. Maples reported on 803 KAR 2:127, Failure to Correct Violation, first established June 6, 1979 with no amendments since. The language mirrors language found in 29 CFR 1903.8 and a new title is recommended to better reflect the subject matter. The KY OSH Program supports the adoption of the amendment.

There being no questions for Ms. Maples, Chairman Roberts opened the floor for a motion to adopt amendment to 803 KAR 2:127. A motion was made by Ms. Blair and seconded by Mr. Stovall; the motion passed unanimous.

Ms. Maples continued 803 KAR 2:130, Informal Conference, effective December 11, 1974 with no amendments since. The language mirrors language in 29 CFR 1903.20. A new title is recommended. The KY OSH Program supports the adoption of these amendments.

There being no questions for Ms. Maples, Chairman Roberts opened the floor for a motion to adopt amendment to 803 KAR 2:130. A motion was made by Mr. Carey and seconded by Mr. Kay; the motion passed unanimously.

Ms. Maples continued with recommendations for 803 KAR 2:140, Contest of Citation, effective December 11, 1974, with no amendments since. The language mirrors language in 29 CFR 1903.17. A new title is recommended to accurately reflect the subject matter. The KY OSH Program supports the adoption of these amendments.

There being no questions for Ms. Maples, Chairman Roberts opened the floor for a motion to adopt 803 KAR 2:140. A motion was made by Mr. Stovall and seconded by Ms. Blair; the motion passed unanimously.

Chairman Roberts asked Mr. Stribling to continue with the next regulatory amendment for consideration. Mr. Stribling reported on 803 KAR 2:170, Variance and Interim Order, which mirrors requirements found in 29 CFR Part 1905, Rules of Practice. This regulation has been untouched since its December 11, 1974 effective date. The amendments are primarily technical and intended to maintain consistency with other OSH regulations. Additionally, changes in Section 8 consolidate the language for an interim order into a single section and other amendments throughout the regulation address interim orders alongside variance language. The KY OSH Program supports the adoption of the amendment.

There being no questions for Mr. Stribling, Chairman Roberts asked for a motion to adopt these changes to 803 KAR 2:170. A motion was made by Mr. Holbrook and seconded by Dr. Byrd; the motion passed unanimously.



Ms. Maples continued with the next regulatory amendment for consideration, 803 KAR 2:220, Refusal to Work when Dangerous Conditions Exist. Effective in 1982, the regulation mirrors language found in 29 CFR 1977.12. A title change is recommended to reduce redundancy. The KY OSH Program supports the adoption of the amendment.

There being no questions for Ms. Maples, Chairman Roberts asked for a motion to adopt amendments to 803 KAR 2:220. A motion was made by Ms. Blair and seconded by Ms. Bednark; the motion passed unanimously.

Chairman Roberts asked Mr. Stribling to continue with the last two (2) regulations for Board consideration. Mr. Stribling reported on 803 KAR 2:250, Discrimination. Effective February 10, 1987, the regulation mirrors the federal discrimination requirements established in 29 CFR Part 1977. The amendments are technical and intended to maintain consistency with other OSH regulations. The KY OSH Program supports the adoption of the amendment.

There being no questions, Chairman Roberts opened the floor for a motion to adopt amendment to 803 KAR 2:250. A motion was made by Mr. Carey and seconded by Mr. Holbrook; the motion passed unanimously.

Mr. Stribling continued with 803 KAR 2:310, Medical Services and First Aid. The regulation is based upon requirements found in 29 CFR 1910, Subpart K, specifically 29 CFR 1910.151. This is one of OSHA's legacy rules enacted approximately fifty (50) years ago. The requirement for first aid in Kentucky has been in effect since January 1, 1975 and is maintained in this amendment. Updates include incorporation of the national consensus standard, ANSI Z358.1, May 2014 edition, whereas it is currently the 1990 edition. Currently, you cannot purchase an eyewash station or emergency shower that meets the 1990 edition requirements. The KY OSH Program supports the adoption of these amendments.

There being no questions for Mr. Stribling, Chairman Roberts asked for a motion to adopt amendment to 803 KAR 2:310. A motion was made by Mr. Stone and seconded by Ms. Bednark; the motion passed unanimously.

Chairman Roberts opened the floor for members to ask questions or share comments before closing.

Ms. Blair offered a thank you to staff for the work that's gone into making it easy to do these meetings virtually and all of the material provided. Chairman Roberts echoed his appreciation for staff as well as the OSH Program as a whole.

Mr. Henton expressed confusion regarding when regulations and updates are applicable to agriculture. Mr. Henton asked for clarification. Chairman Roberts asked Mr. Stribling to respond. Mr. Stribling stated that none of the regulations today are applicable to the agriculture industry. All regulations today are applicable to either general industry or construction. Very few standards are applicable to agriculture as addressed at the previous meeting. All



amendments to those regulations were simply technical. Mr. Henton shared concerns that as an agricultural representative, it seems incongruous to vote on regulatory issues not applicable for industry he represents. Chairman Roberts advised that when the Board was created, it was the intent for members appointed to come from all areas of industry to ensure a broad representation with various viewpoints.

Chairman Roberts asked if there were any other comments or questions. There being none, Chairman Roberts encouraged everyone to try to attend the upcoming Governor' Safety and Health Annual Conference in Bowling Green the last week of September. The event is co-sponsored by the Kentucky Safety and Health Network and the Labor Cabinet.

With nothing further to report, Chairman Roberts opened the floor for a motion to close the meeting. A motion to adjourn was made by Mr. Nichter and seconded by Mr. Stovall; the motion passed unanimously. The meeting adjourned at 11:04 am ET.